Supreme Court, U.S.
FILED

No. 93-1317 FEB 15 1994

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

DAISEY SANDERSON

Petitioner

v.

WINFIELD CARRAWAY HOSPITAL,

DR. V.R. CHANDRAN ET AL.

Respondents

PETITION FOR WRIT FOR CERTIORARI FROM

SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the resident doctor [student doctor in medical emergency room violated the COBRA [Consolidated Omnibus Budget Reconcilation Act] potential liability element to stabablize a patient [Daisey Sanderson] by discharging Ms. Sanderson when she had a broken hip when the student doctor misinterpreted her X-Rays and sent her home with Tylernol on December 3, 1988. However, after the staff doctor, Dr. Jordon, returned on December 5, 1988, he had the X-Rays read and sent a Winfield Carraway Hospital ambulance to pick up Ms. Sanderson who had to have immediately an operation for a hip prosthesis. Furthermore, Ms. Sanderson was again not properly medically treated because Dr. Chandran at Winfield Carraway Hospital in an operation placed the wrong-size hip prosthesis in Ms. Sanderson's body and this wrong size had to be replaced in a second operation by another orthopedic doctor with the proper hip prosthesis or Ms. Sanderson would have been a wheel chair patient or died because the

loose big and wrong size hip prosthesis was causing a deterioration of her femur bone of her leg i.e. whether Ms. Sanderson should have received the $50,000 for penalty for violation of COBRA or at least had a jury trial based of disputed facts of whether Ms. Sanderson was wrongfully sent home by hospital personnel before being treated in the emergency room for a broken hip, and before the X-Rays had been competently read to determine the true medical problem of Ms. Sanderson, and also whetehr Ms. Sanderson owed any money to the Winfield Carraway Hospital after such poor treatment of Ms. Sanderson [Note this Writ of Certiorari is a Writ for both cases known as CV 90-187 and CV 90-106 which were appealed to the highest state court, the Supreme Court of Alabama, who just affirmed with no opinion, the reason for this petition for Writ of Certiorari.

II. Whether Ms. Sanderson's due process and liberty rights under the 5th and 14th amendments to the U.S. Constitution were violated when summary

judgment was wrongfully granted when disputed facts of whether or substandard medical treatment was administered to Ms. Sanderson especially since the Winfield Carraway Hospital, resident doctor, in the Emergency Room, sent Ms. Sanderson home with no treatment for her hip which was broken and Ms. Sanderson was not treated until 2 days later but then again Ms. Sanderson did not receive proper treatment since Dr. Chandran in his operaton placed the wrong size hip prosthesis into the body of Ms. Sanderson which had to be replaced by a second operation by a orthopedic surgeon?

III. Whether Rule 53, Alabama Rules of Appellate Procedure, with Supreme Court of Alabama ruling Affirmed "No Opinion" violates the due process in the courts of Petitioner [Appellant], under the 5th and 14th Amendments of the U.S. Constitution?

TABLE OF CONTENTS

	Page
Table of Contents	iv
Questions Presented for Review	i
Parties to the Proceeding	vii
Oral Argument Requested	vii
Citations of Authority	v
Opinions below	1
Jurisdiction	2
Statement of Case	3
Statement of the Facts	5
Reasons for Writ of Certiorari	9
Conclusion	14
Appendix	a-1

CITATIONS OF AUTHORITY

Page

Austin v. Wilder,
215 S.E. 2d 794 (N. Carolina, 1975).. 7

Bantam Boos, Inc. v. Sullivan, R.I., 1963,
83 S Ct 631, 372 U.S. 58, 9 L.Ed 2d 584 12

Booth v. United Services Auto Association,
469 So. 1281 (Ala. 1985) 6

Clark v. Alabama Farm Bureau Mutual Casualty Insurance Co., 465 So. 2d 1135 (Ala. Civ. App. 1984) 6

Hightower & Co. v. U.S. Fidelity & Guar.
527 So. 2d 698 (Ala. 1988) 6

Horwitt v. Horwitt, D.C. Conn. 1950,
90 F. Supp. 529 13

Jones v. Alabama State Docks,
443 So. 2d 902 at 903 (Ala. 1983) .. 8,12

Johnson v. Soulis, 7
512 F. 2d 867, (Wyoming, 1975) ...

Pruitt v. Elliott,
460 So. 2d 1275 (Ala. 1984) 6

Standard Oil Co. v. Graves, Wash. 1919,
49 S Ct 320, 269 U.S. 389, 63 L.Ed 662 13

St. Cyr v. Greyhound Lines, Inc., 486 F. Supp. 724, (U.S. Dist. Court, E.D.N.Y., 1980) 7

Swendsen v. Gross, 530 So. 2d 764 (Ala. 1988) 7

Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) 12

Other

42 U.S.C.S. § 1395dd 10

Rule 53, Alabama Rules of Appellate Procedure iii 13,a-5

Rule 56, Alabama Rules of Civil Procedure 7

PARTIES TO THIS PROCEEDING

The Plaintiffs/Appellants/Petitioners is:

Daisey Sanderson, Hamilton, Alabama

The Defendants/Appellees/Repondents are:

Winfield Carraway Hospital, Dr. V.R. Chandran, and Chandran Clinic, Winfield, Alabama.

ORAL ARGUMENT REQUESTED

The Petitioner respectively requests that oral argument be allowed because of the complexity of the facts and the law in the instant case, and so that the Honorable Justices can ask questions.

No.

IN THE
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WINFIELD CARRAWAY HOSPITAL,

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OPINIONS BELOW

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below into this Writ of Certiorari.

JURISDICTION

Reversal and review is sought from the final decision from the Supreme Court of Alabama, the highest court in Alabama who originally denied the appeal. Jurisdiction is invoked under 28 U.S.C. § 1257 as Writ.

Constitutional Provisions involved

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of

... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

The Winfield Carraway Hospital first sued Ms. Sanderson on May 8, 1990, in CV 90-106 for the amount of $12,104.00, interest, and $4,039.67 attorney fee when the Winfield Carraway Hospital provided substandard treatment to Ms. Sanderson as seen in the facts below. CV 90-106 and CV 90-187 were consolidated in the lower court.

The Complaint of CV 90-187 was timely filed and notarized on August 13, 1990 with exhibits.

Amended Complaint was filed on January 11, 1191. Dr. Asam took the depositions of the Administrator of Winfield Carraway Hospital, Dr. Jordon, staff doctor of the Emergency Room of Winfield Carraway Hospital, Dr. V.R. Chandrin, Chandrin Clinic, and Dr. Brock. Defendants attorneys failed to take deposition of Ms. Sanderson.

Summary Judgment hearing was conducted and the actual prosthesis removed from the body of Ms. Sanderson by Dr. Brock was presented; however, the Honorable Judge failed to notice the disputed facts of whether COBRA had been violated by the Winfield Hospital, and whether Dr. Chandran had committed malpractice on Ms. Sanderson; therefore, the due process and liberty rights of Ms. Sanderson under the 5th and 14th amendments to the U.S. Constitution were violated [Issue #V in the Supreme Court of Alabama]. The elements of summary judgment were not met despite the order by the Honorable Judge which was erroneous.

STATEMENT OF THE FACTS

The instant case is a malparactice case by Dr. V.R. Chandran and a violation of COBRA by the Winfield Carraway Hospital. Ms. Daisey Sanderson presented to the Emergancy Room of the Winfield Carraway Hospital with a fractured hip but was wrongfully sent home because the resident doctor [student doctor] miniterpreted the X-Rays and Ms. Sanderson had no insurance at the time. Dr. Jordon, the expert emergency room expert staff doctor had Ms. Sanderson picked up by an ambulance to bring her form Hamilton, Alabama to Winfield Carraway Hospital where surgeryhad to be performed immediatley to implant a hip prosthesis. Dr. Chandran who performed the hip prosthesis operation placed the wrong sized hp prosthesis in Ms. Sanderson's body, and later she had to be operated on by an orthopaedic specialist, Dr. Brock from Tuscaloosa to place a different size prosthesis in her body or she would have become a wheelchair patient according to Dr. Brock.

Both Defendants Winfield Carraway Hospital, and Dr. Chandran disputed the true facts which were

documented by the medical records. The Winfield Carraway Hospital sued Ms. Sanderson, first in CV 90-106, trying to obtain hospital fees when Ms. Sanderson was malpracticed by the hospital since a resident student doctor failed to properly treat her in the emergency room and sent her home instead of admitting herinto the hospital with a broken hip.

The Supreme Court of Alabama has failed to rule according to its own laws concerning summary judgment when there are clearly disputed facts and the factss hould have been decided by a jury.

The "No opinion" ruling ignored and was inconsistent to the following cases:

Booth v. United Services Auto Association, 469 So. 1281 (Ala. 1985); Pruitt v. Elliott, 460 So. 2d 1275, (Ala. 1984); Hightower & Co. v. U.S. Fidelity & Guar. 527 So. 2d 698 (Ala. 1988); Clark v. Alabama Farm Bureau Mutual Casualty Insurance Co., 465 So. 2d 1135 (Ala. Civ. App.

1984). Since Dr. Chandran merely denied liability, the following case was ignored:

Swendsen v. Gross, 530 So. 2d 764 (Ala. 1988) at 765 states, "Mere general denial of liability, without more does not entitle movant to summary judgment as matter of law." Rules Civ. Proc., Rule 56.

The laws defining "material" fact was also ignored which is found in Johnson v. Soulis, 512 F. 2d 867, (Wyoming, 1975), and Austin v. Wilder, 215 S.E. 2d 794 (N. Carolina, 1975).

Usually an issue concerning negligence is a jury issue and is to be determined by appropriate trier of fact's application of "reasonable man" standard which was also ignored by the Supreme Court of Alabama's ruling of affirmed with "No opinion."

See St. Cyr v. Greyhound Lines, Inc., 486 F. Supp. 724, (U.S. Dist. Court, E.D.N.Y., 1980) states,

"Issues concerning negligence, such as observance of due care... are ordinarily not susceptible to summary adjudication."

Ms. Daisey Sanderson has had no due process in any court and is a violation of her 5th and 14th Amendments to the U.S. Constitution. See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due Process Clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

The Petitioner does not owe over $12,000.00 to a hospital who damaged her body and aggravated her broken hip condition when a resident doctor misinterpreted an X-Ray when the resident doctor failed to have a radiologist or a staff doctor to read the X-Rays, when the same doctor failed to admit Ms. Sanderosn to the Winfield Carraway Hospital when she had no insurance.

REASONS FOR WRIT OF CERTIORARI

I. The Resident doctor [student doctor in medical emergency room VIOLATED THE COBRA [Consolidated Omnibus Budget Reconcilation Act] potential liability element to stablelize a patient [Daisey Sanderson] by discharging Ms. Sanderson when she had a broken hp when the student doctor misinterpreted her X-Rays and sent her home with Tylernol on December 3, 1988. The point is the student doctor should have called the staff doctor to have the X-Rays to be properly read and/or admitted Ms. Sanderson to the hospital which he failed to do and was a violation of COBRA by intentionally discharging Ms. Sanderson from the Emergency room of the Winfield Carraway Hospital with a broken hip. After the staff doctor, Dr. Jordon, returned on December 5, 1988, he had the X-Rays read and sent an ambulance to pick up Ms. Sanderson who had to have immediatley an operation for a hip prosthesis.

See the U.S. Code citation 42 U.S.C. 1395dd. et seq. Requirement which relates to appropriate transfer of the patient and in this case has to do with discharging the patient prematurely before the X-Rays were properly read.

The enforcement provision stated "If a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section" the hospital is subject to sanctions, including the termination of its member ship, in addition to exposure to civil liability.

See 42 U.S.C.S. § 1395 dd (d) Enforcement. ...(2)"Civil monetary penalties. (A) A participating hospital that knowingly violates a requirement of this section is subject to a civil money penalty of not more than $50,000 for each violation."

II. Petitioner's DUE PROCESS rights in the courts have been violated after she received permanent damage because of the lack of proper medical care by Dr. Chandran and the resident doctor [doctor

in training] at the Emergency Room of Winfield Carraway Hospital, misinterpreting the X-Rays and sending Ms. Sanderson home with a broken hip and tylernol, and when the same X-Rays were finally read by a competent radiologist then Dr. Jordon, ordered an ambulande to bring Ms. Sanderson from Hamilton, Alabama to Winfield, Alabama, when the resident doctor sent her home on December 3, 1988, and she had to be brought back in an ambulance on December 5, 1988, based on the diagnosis of acute fracture after she had been sent home since she had no insurance by the resident doctor who did not admit her into the hospital and she was not admitted until two days later in the hospital after a radiologist read the same X-Rays. Ms. Sanderson's due process rights in the court were surely shown since she received poor hospital care and poor surgery at Winfield Carraway Hospital i.e. substandard treatment.

Note: Questions Presented II and III on due process are discussed together.

BOTTOM LINE is that no due process under the 5th and 14th amendments to the U.S. Constitution have been shown in any court in this instant case.

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903 (Ala. 1983), which states,

"Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13.

Writ, showing violation of due process under 5th and 14th Amendments

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) on due process.

Also see Bantam Books, Inc. v. Sullivan, R.I., 1963, 83 S Ct 631, 372 U.S. 58, 9 L. Ed 2d 584, which states,

"The Supreme Court's appellate jurisdiction was properly invoked, where the state court judgment sought to be reviewed upheld a state statute against contention that on its face and as applied, the statute violated the federal Constitution."

See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 269 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judge by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void.] (Emphasis added.)

See Horwitt v. Horwitt, D.C., Conn. 1950, 90 F. Supp. 529,

"United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes."

The Supreme Court of Alabama has recently passed some type of procedural rules concerning ruling Affirmed with no opinion which further violates the due process rights in the instant case, [See attached Rule 53, Alabama Rules Appellate procedure].

The Writ of Certiorari should be granted and a merits brief allowed to be written, and then the instant case should be reversed and remanded with instructions on constitutional law to the trial court to be tried by a jury on all triable issues in the instant case.

All the law presented in this Writ is incorporated into the Reasons for this Writ.

CONCLUSION

The instant case should be reversed and remanded for a jury trial of all triable issues against all Defendants.

Because of all the disputed material facts in the instant case concerning the substandard care of Dr. Chandran and the resident doctor from the Emergency Room of the Winfield Carraway Hospital, the Honorable Judge in the trial court made reversible and gross error in granting a summary judgment for all Defendants because the elements for summary judgment were not met and granting summary judgment as a matter of law when there are disputed facts is unjust when

the Petitioner has suffered pain that she did not need to suffer because of the substandard medical treatment in which she received the wrong type and larger size hip prosthesis [Austin-Moore hip prosthesis], that required her to have to have a second operation by Dr. Brock, and orthopedic surgeon, so that she would not be a vegetable in a wheelchair or die because the first hip prosthesis was loose due to poor surgery and wrong size prosthesis.

2/14/94

Respectively submitted,
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205 333-1999

APPENDIX I

IN THE CIRCUIT COURT OF MARION COUNTY, ALABAMA

DAISEY SANDERSON, CV Action No. CV-90-106

Plaintiff CV Action No. CV-90-187

vs.

WINFIELD CARRAWAY HOSPITAL,

Dr. V.R. Chandran, et al.,

Defendants

O R D E R

This cause coming on to be heard on the motion of plaintiff Daisey Sanderson for summary judgment, as amended July 7, 1992, and the separate and severable motions for summary judgment of defendants Dr. V.R. Chandran, Chandran Clinics, P.C. and Carraway Methodist Hospitals of Alabama, Inc., and those matters in support of and in opposition to, said motions, counsel for the parties appearing and arguing said motions, now upon consideration of the foregoing, the Court expressly determines that there is no just reason for delay and expressly directs the entry of this judgment, now upon consid-

eration of the foregoing, this court finds that there is no genuine issue of any material fact in defendant Carraway's motion and that said defendant is entitled to judgment thereon as a matter of law, further finds that there is no genuine issue as to any material fact in the defendants' motions for summary judgment and that said defendants are entitled to judgment as a matter of law, and further finds that the above findings preclude summary judgment for plaintiff, now upon consideration of the foregoing, it is ORDERED AND ADJUDGED as follows:

1. Carraway Methodist Hospitals of Alabama, Inc. shall have and recover of Daisey Sanderson the sum of Twelve thousand one hundred four dollars ($12,104), together with the costs of this cause for which if not paid, let execution issue according to law. [This is sad judgment since Ms. Sanderson was made an indigent because of the abuse on her body with the first operation with the big wrong size hip prosthesis].

2. Daisey Sanderson shall not have and recover of defendants Dr. V.R. Chandran, Chandran Clinics, P.C. and Carraway Methodist Hospitals of Alabama, Inc. and they are discharged herein.

3. The court has considered the pleadings and those matters stated in its order setting the motions for summary judgment for hearing on July 7, 1992 AND ONLY THOSE MATTERS, the court not considering entire depositions but only the excerpts.

4. The motion to strike of Carraway is denied, this Court considering that the proper way, in all the Circuits this Court is aware of, of presenting excerpts from depositions is by affidavit, this hearing being held before the August 1, 1992, amendment to A.R.C.P. (which argably has changed this practice).

5. The October 1992 trial date of th ese cases is cancelled. Done this 9th day of October, 1992.

s/Carlton Mayhall, Jr.

Circuit Judge

APPENDIX II

STATE OF ALABAMA -- JUDICIAL DEPARTMENT

THE SUPREME COURT

OCTOBER TERM, 1993-94

1920824 and 1920825

Daisey Sanderson v. Winfield Carraway Hospital, et al.

Appeals from Marion Circuit Court (CV-90-187 and CV 90-106)

MADDOX, JUSTICE.

AFFIRMED. NO OPINION.

See rule 53(a)(1) and (a)(2)(E), Ala.R.App.P.

Hornsby, C.J., and Shores, Houston, and Kennedy, JJ., concur.

October 15, 1993

APPENDIX III

IN TUE SUPREME COURT OF ALABAMA

November 19, 1993

1920824

Daisey Sanderson v. Winfield Carraway Hospital, et al. (Marion: CV 90-187)

1920825

Daisey Sanderson v. Winfield Carraway Hospital, Inc. [Mistake by Supreme Court of Alabama] Case is styled Winfield Carraway Hospital, Inc. v. Daisey Sanderson] (Marion: CV-90-106)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

MADDOX, J. -Hornsby, CJ, Shores, Houston and Kennedy, JJ., concur.

APPENDIX IV

RULE 53. OPINIONS AND "No OPINION" CASES OF THE SUPREME COURT AND THE COURT OF CIVIL APPEALS

(a) Affirmance Without Opinion. The Supreme Court of the Court of Civil Appeals may affirm a judgment or order of a trial court without an opinion if court determines.

(1) That an opinion in the case would serve no significant precedential purpose; and

(2) That one of the following circumstances exists:

(A) The judgment or order appealed from is based on findings of fact that are not clearly, plainly, or palpably erroneous.

(B) The evidence adequately supports the jury verdict on which the judgment or order is based;

(C) In a nonjury case in which the judge has made no specific findings of fact, the evidence would support those findings of that would have been necessary to support the judgment or order;

(D) The order of an administrative agency is sufficiently supported by the evidence in the record;

(E) The appeal is from a summary judgment, a judgment on the pleadings, or a judgment based on a directed verdict, and judgment is supported by the record; or

(F) The court, after a review of the record and the contentions of the parties, concludes that the judgment or order was entered without an error of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Writ for Certiorari was sent to Mr. Braxton W. Ashe, P.O. Box 899, Tuscumbia, AL 35674, Mr. Crawford McGiveran, P.O. Box 830612, Birmingham, Ala. 35283, and Mr. James L. Kessler, 529 Frank Nelson Bldg., Birmingham, Ala. 35203 this 14 day of February 1994.

Julia Asam

the

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